

## Judicial Profile

KELLY A. ZUSMAN

# Hon. Malcolm F. Marsh U.S. District Judge, District of Oregon

**ON THE SECOND floor of the Mark O. Hatfield U.S. Courthouse in Portland, Ore., at the entry to the jury assembly room, a bas relief features the kind and thoughtful image of Judge Malcolm F. Marsh. The idea for the relief itself came from**

came from the General Services Administration and its desire to honor the man who is primarily responsible for the court's input into the design and features of the courthouse that has since served as a model for other federal courthouse designs across the country. The placement — near the jury assembly room rather than in the main lobby — was Judge Marsh's decision. And that decision reflects just a small part of Judge Marsh's philosophy about justice and his respect for the jury system and the jurors who serve in his courtroom.

By taking the north elevators to the 15th floor and walking across the glass-walled lobby, you will see a view of the park

below. During the courthouse design process, Judge Marsh insisted upon a large, light-filled area, where litigants could take a break from court proceedings and have enough light and space to “cool off” and seek respite, however temporary, from the stress of court proceedings. Litigants on the ninth floor are especially fortunate, because that floor opens to an outdoor park and courtyard featuring whimsical bronze sculptures. Little bronze laptop computers with hands and feet dance around the trees, chased by beavers dressed as attorneys wielding pencils. Walk through the trees and benches and you will come upon a bronze courtroom scene — complete with an owl (not spotted) serving as judge, a cat in the defense box with a feather dangling from the side of his mouth, and a jury of dogs and birds in various stages of attention.

The top floor of the building has one large ceremonial courtroom and reveals more signs of Judge Marsh's influence — four hand-woven tapestries created by an Oregon artist. Judge Marsh insisted that the federal courthouse for the District of Oregon must include some representation by an Oregonian artist, and Judith Paxon-Foxe, a local weaver, was chosen for the project. Her first piece is nearly 18 inches long and depicts the Columbia River gorge, which separates Oregon and Washington. The second piece (of the same size) includes trees and flowers indigenous to the state. The third, located just outside the courtroom, uses vibrant colors to display “blind justice,” and the fourth is an outline of the state of Oregon.

If you return to the 15th floor, take the hallway on the south side of the building to Judge Marsh's chambers. The walk from the main lobby to his chambers is lined with windows set at eye level. On a clear day, you can see Mount St. Helens, Mount Adams, and the tip of Mount Ranier. If it's cloudy, turn your attention to the black-and-white photographs on your left depicting fishing scenes from Oregon around the turn of the century.

At the end of the hallway are Judge Marsh's chambers, and visitors are greeted by a spectacular view of the east side of Portland. The Willamette River, frequented by everything from kayaks and sternwheelers to naval ships, is just three blocks away. Five miles east, the tree-studded park of Mount Tabor is visible. Further east, the symbol of Oregon, Mount Hood, rises majestically. In observing Judge Marsh's office you slowly begin to realize that you are surrounded by the essence of Oregon, for, in fact, you are in the presence of a man who fully represents the finest elements of the state and its people. Placed on his bookshelves are a hand-carved loon and a photograph of the Portland waterfront circa 1930, with



Hon. Malcolm F. Marsh and the bas relief featuring the judge.

the Stephenson Company building in the foreground. (George R. Stephenson was Judge Marsh's grandfather.) On the windowsill is a photograph of Celilo Falls before The Dalles Dam was erected. In a drawer of his desk, Judge Marsh keeps a compass once owned by a man named Metzger, who laid out the original baseline for subsequent state surveys. And immediately behind his desk chair, the judge displays a dozen photographs of his wife, children, and grandchildren. Three of his grandchildren are fifth-generation born in Oregon.

Malcolm F. Marsh was born in Portland, Ore., in 1928 and moved with his family to McMinnville, Ore., in 1935. From his mother's side of the family, Judge Marsh traces his Oregon ancestry to the early 1850s. On his mother's paternal side, Marsh's Stephenson grandparents arrived in Oregon from Vermont in the early 1850s via a covered wagon on the Oregon Trail. Stephenson Road, near Mountain Park, was the original site of George Stephenson's hop farm. His great-grandparents (the Robertses) sailed out of Boston Harbor in 1859 bound for Ponape Island in the South Pacific. They founded a congregational church (which survives to this day) and later settled in The Dalles, Ore., in 1868. Judge Marsh's grandmother, Anna, was born in The Dalles in 1869. The judge inherited a breakfront that his great-grandmother had carried with her on a covered wagon; the judge's brother, Roger, received a chest that had sailed around Cape Horn with the Robertses. Their mother was born in a Victorian-style house that still stands in the Lair Hill neighborhood in southwestern Portland.

Judge Marsh's father, Francis, practiced law in McMinnville for over 50 years. Briefly, during the Prohibition years, Francis prosecuted bootleggers for the U.S. attorney's office. Francis had an identical twin brother named Gene, who was also a lawyer and who served as president of the Oregon Senate in 1953. Both brothers served a term as president of the Oregon State Bar. Frank and Gene went to law school together and told stories about taking tests for one another and sharing train tickets because they looked so much alike. A mutual friend once claimed that he could tell the two apart because Gene's nose had been broken and angled slightly to one side. Gene never had children, but he and his wife were so close to Frank and his family that Judge Marsh and Roger felt like they had grown up with two fathers.

Growing up with two hardy Oregonian lawyers meant lots of fishing, hunting, and outdoor activities. Frequent visits to a rustic cabin in the Steens Mountains and other trips provided a childhood that taught Judge Marsh the intimate details of the geography of the state. Today, Judge Marsh's law clerks and externs find that when they inquire about where to go hiking, camping, or fishing, they've come to the right person. Judge Marsh knows the state like most of us know our own homes, and he can direct a person to just the right spot to catch a steelhead on the Rogue River or the best place to make camp in central Oregon.

Judge Marsh served in the Army in Japan in 1946–47 and returned to Eugene, Ore., for law school. It was there

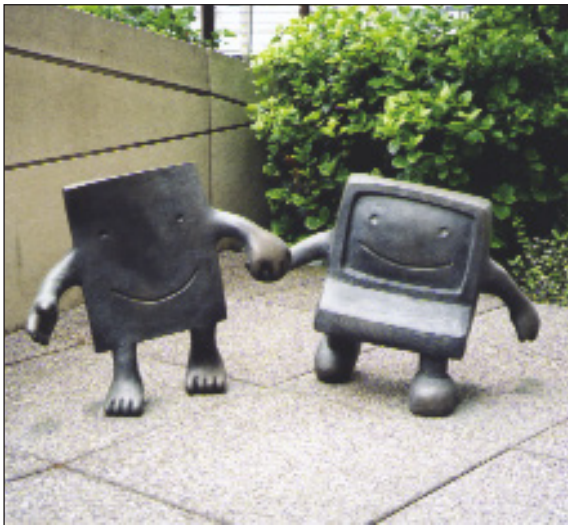


(top photo): Judge Marsh with bronze characters in the courtyard of the Mark O. Hatfield U.S. Courthouse in Portland; (bottom photo): artwork featuring "blind justice" by Oregon artist and weaver Judith Paxson-Foxe.

that he met a tall, slender sorority girl with bright blue eyes named Shari Long. They married in 1953 and recently celebrated their 50th wedding anniversary. Son Kevin arrived in 1958, followed by daughters Carol and Diane. (In the official portrait created of Judge Marsh when he took senior status, a photograph of Shari appears behind him, just above his right shoulder — a fitting symbol of the integral role she has, and continues to hold, in his life.)

After graduating from the University of Oregon in 1954, Judge Marsh briefly went into private practice





Artwork from the Mark O. Hatfield U.S. Courthouse in Portland (top photo): indoor waterfall; (bottom photo): bronze characters in the courthouse courtyard.

with his father. The monthly pay of \$300 was a bit tough on the young couple, and the judge soon found in Salem, Ore., the man who would be his partner for the next 33 years — Ned Clark. The judge quickly became an accomplished trial lawyer specializing in products liability cases and eventually attracting large clients like Volkswagen, Armstrong Cork Company, the PLF, and numerous insurance companies. In 1979, he was inducted into the American College of Trial Lawyers.

In the late 1950s, Judge Marsh struck up a friendship with Sen. Mark Hatfield. When an opening came up for a federal district judgeship in Oregon (due to the ascendancy of Judge Edward Leavy to the Ninth Circuit Court of Appeals), Sen. Hatfield was, by then, well aware of Marsh's impeccable reputation in the legal community — both for the judge's skill as an advocate and his high ethical standards. Marsh was an obvious choice for the position, and his confirmation was swift and without controversy.

Appointed in 1987 by President Ronald Reagan, Judge Marsh took the bench and adapted to a caseload that included everything from arresting vessels to deciphering the reverse doctrine of equivalents in patent cases. He quickly earned a reputation for his hard work and diligence in deciding cases and issuing opinions. Litigants were not always happy with the results, but Judge Marsh consistently won praise for the clarity of his reasoning and the promptness with which he made his decisions. The judge has the unique gift of being able to get to the heart of an issue, see things that others may have overlooked, and ask just the right questions. He is also known as a judge who has the grace to admit when he is wrong and to promptly correct any error.

In his tenure on the bench, Judge Marsh is probably best known as the “salmon judge,” because he presided over state and tribal fisheries management in *United States v. Oregon*<sup>1</sup> and oversaw the first cases filed under the Endangered Species Act — cases that challenged the operation of the Columbia River Power System, after several salmon species were listed as endangered in 1992. Other notable cases involved high school drug testing in Vernonia, Ore.; the criminal prosecution of the followers of the Bagwan Shree Rajneesh; the Ecclesia Athletic Association child abuse case; and trade dress and punitive damages claims involving the Leatherman Pocket Survival Tool. Throughout his tenure on the bench, Judge Marsh has been a mentor for many law clerks and externs, teaching thoughtfulness, humility, and the grace that comes from hard, honest work, and thorough preparation. Jurors are also particularly fond of the judge, who routinely holds informal contests during voir dire to see who has the most grandchildren.

To the dismay of the federal legal community, Judge Marsh took senior status in April 1998. A bright, creative mind needs continual growth and challenges, and Judge Marsh has turned his attention to woodworking, theological studies, fishing in the Rogue River and, most importantly, more time with his family. He represents the best that this country and, more particularly, Oregon have to offer. He is, in the finest sense, a true son of the state of Oregon. He has made, and continues to make, the rest of us proud to be Oregon lawyers. **TFL**

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*Kelly Zusman is a former career law clerk to Judge Marsh and currently works as an assistant U.S. attorney in Portland, Ore.*

#### Endnote

<sup>1</sup>*United States v. Oregon*, 787 F.Supp. 1557 (D.Ore. 1992).